IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5017 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

POWERPACK COMMUTATORS (INDIA) PVT LTD

Versus

GOVT OF GUJARAT

Appearance:

Special Civil Application No. 5017 of 1989

MR MILAN S JOSHI for Petitioner

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1, 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/03/2001

ORAL JUDGEMENT

1. At the time of admitting this matter, the Court had passed an order for hearing this matter with Special Civil Application No.7279 of 1988. However, Special Civil Application No.7279 of 1998 has already been disposed of by this Court on 23rd March, 2000 and, thereafter, this matter has been placed for final hearing. Accordingly, this Special Civil Application is now required to be decided on its own merits.

2. The petitioner is a Private Limited Company and in view of certain incentives and policy declared by the Government for the purpose of encouraging industries in the backward and developing area, the petitioner decided to establish the Industry in the backward area in the State of Gujarat. It is the say of the petitioner that

the petitioner-Company is also registered as a Small Scale Industry and that the petitioner-industry was entitled to get subsidy of the Government as per the incentive scheme declared by the Government and for that purpose, representation was made to the authority for giving benefit of incentives as provided in the scheme. However, the District Industries Centre, Valsad, by order dated 12.6.1986, rejected the prayer for giving cash subsidy on the ground that the plot which the petitioner is holding was purchased by the predecessor-in-title of the petitioner before 1.1.1982 and in that view of the matter, the unit of the petitioner is not entitled to the benefit of any cash subsidy. The petitioner went on making correspondence with the Departments from time to time, one of which is annexed at page 56 dated 21.12.1987, addressed to the Secretary, Industries, Mines and Power Department. However, since no decision was taken on the said representation, ultimately, the said action was challenged by way of filing the present Special Civil Application.

3. Notices were issued to the Department, but no affidavit-in-reply has been filed. Therefore, the petition is required to be considered only on the basis of the averments made in the petition. However, it is not necessary to examine the scheme in detail, as, this Court, on almost identical facts of the case, and on an identical scheme, has already taken the view that benefit of the cash incentive is available to Industry even though the predecessor-in-title might have purchased the land prior to 1.1.1982. It is required to be noted that, initially, this petition was required to be heard with Special Civil Application No.7279 of 1988, which deals with the identical point. However, the same was decided earlier and in the judgment of this Court in the aforesaid Special Civil Application (Coram : C.K. Thakkar, J.) the Court came to the conclusion that even though the original allottee might have purchased the plot earlier in point of time (in that case, it was purchased by the original allottee in the year 1996), the question which is required to be considered is whether the petitioner would be entitled to the benefit under the Scheme or not. The relevant part of the observation in the earlier order is reproduced hereinbelow :-

> " ... ...
>
> Contention of Mr.Bukhari was that since the original allottee had purchased the plot in 1976, the petitioner would not be entitled to benefit under the scheme. The question

> is whether the petitioner would be entitled to benefit under the scheme or not. Since the petitioner has purchased the plot on 28th March, 1984, that is during the extended period of the scheme, it would be entitled to the benefits under the scheme.
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> For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed. The impugned order dated 21st March, 1986 is quashed and set aside and it is directed that the respondents shall disburse the amount of State Cash Subsidy Scheme to the petitioner in terms of Resolution dated December 22, 1977 read with Resolution dated 19th August, 1983, Annexures `A' and `F'. It is clarified that the petitioner would be entitled to the benefit of the said scheme subject to the conditions laid down in the said resolutions. Rule is made absolute accordingly. No order as to costs.
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> ... ... "

4. In the instant case, the petitioner has also purchased the plot on 22nd March, 1984 and, therefore, the case of the present petitioner also squarely falls within the ambit of the decision taken by this Court in the aforesaid Special Civil Application. In fact, I am informed by the petitioner as well as by the learned AGP that the order of rejection of the subsidy claim of the petitioner of Special Civil Application No.7279 of 1988 is identical on which the claim of the present petitioner was also denied, i.e. the original allottee purchased the plot prior to 1.1.1982. It is required to be noted that in view of the judgment of this Court, as quoted above, even if the predecessor of the claimant might have purchased the land prior to 1st November, 1982, then also, the claim of the petitioner cannot be rejected by the Department. Therefore, as the point in issue is already covered by the aforesaid judgment of this Court in Special Civil Application No.7279 of 1988, the present petitioner is also required to be given the same relief as is given in the said case. It is, however, clarified that this benefit may be available to the present petitioner only if the claim of the original purchaser is not pending before the State Government, and if he has made any claim for subsidy, then, naturally, the petitioner will not be entitled to the benefit of the scheme of cash subsidy in his favour. It is clarified

that if the predecessor-in-title of the present petitioner has also moved the Government for giving him the benefit of subsidy, then the Authority concerned will consider whether the benefit is required to be given to the present petitioner or to the original owner. However, it is not in dispute that the present petitioner has already purchased the plot in March, 1984 and, therefore, naturally, his claim is on a stronger footing if at all no other person such as original owner has put his claim before the authority for getting such benefit. However, if the original owner has not placed any claim or prayed for any benefit of the subsidy, the authority is directed to give the benefit of subsidy to the present petitioner and as per the judgment of this Court quoted above, the present petitioner also would be entitled to the benefit of the said scheme subject to the condition laid down in the said Resolutions.

5. The impugned order dated 12th June, 1986 is accordingly quashed and set aside. It is directed that the respondent shall disburse the amount of said cash subsidy scheme to the petitioner subject to the directions given hereinabove. Rule is made absolute with no order as to costs.

Mr.Joshi also makes a request that while giving the benefit of subsidy, interest may be given to the petitioner, as without any reason, the same was denied to him. I am not expressing any opinion as regards the interest claimed by the petitioner. The authority may consider the same in accordance with law.

16th March, 2001 (P.B. Majmudar, J.)

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(apj)